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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,547	09/25/2000	Eugene Lawrence Podsiadlo	10316-003-999	2854
7590	05/20/2005			EXAMINER
STEVEN B. POKOTILOW				HAVAN, THU THAO
STROOCK & STROOCK & LAVAN LLP				
180 MAIDEN LANE			ART UNIT	PAPER NUMBER
NEW YORK, NY 10038				3624
				DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/668,547	PODSIADLO, EUGENE LAWRENCE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Thu Thao Havan	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 17 December 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**Detailed Action**

***Response to Amendment***

Claims 1-30 are pending. This action is in response to the amendment received December 20, 2004.

***Response to Arguments***

Applicant's arguments filed December 20, 2004 have been fully considered but they are not persuasive.

In response to the arguments concerning the previously rejected claims the following comments are made:

A.) In response to applicant's arguments, the recitation shares of a pooled investment product have not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

B.) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., successively determining the winning bid *based on varying bids from multiple bidders* and the total number of available shares is *fixed*) are not recited in the rejected claim(s).

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Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

C.) Applicant alleges that the prior art made of record fails to teach a hurdle rate. The examiner disagrees with applicant's representative since Van Horn teaches a rate of return that corresponds to a hurdle rate (col. 4, line 60 to col. 5, line 8; fig. 8-9). In other words, Van Horn teaches rate of return when he discloses each buyer must determine the maximum price at which (or below) he or she is willing to purchase the featured item. Such amount is specified in his or her binding purchase offer. That offer is guaranteed by the buyer's credit card. All offers including the various amounts at which they are submitted are collected and summarized in a database. This process enables accurate, real-time yield management decisions which can be used to advocate a lower per unit price.

D.) Applicant alleges that the prior art made of record fails to teach successively determining and successively updating. The examiner disagrees with applicant's representative since Van Horn discloses successively determining and successively updating (col. 15, lines 48-61). In other words, Van Horn succeeds in changing and modifying the current bids corresponds to updating the bidding information successfully.

E.) Applicant alleges that the prior art made of record fails to teach a total number of available shares. The examiner disagrees with applicant's representative since Van Horn discloses a total number of available shares (col.14, line 30 to col. 15, line 9; abstract). In other words, Van Horn teaches a supplier utilizes the invention's sales

platform to sell a substantial volume of one product for the specific purpose of increasing its market share. In that, he discloses the supplier specifies a minimum sales volume so that no sales are made unless its market share objectives are met. This teaches a total number of available shares since a specific sales volume is available.

With regards to the claims rejected as anticipated over Mini, the examiner would like to point out that the primary reference teaches the claimed limitations and thus provides adequate support for the claimed limitations. Therefore, the examiner maintains that Van Horn anticipated the claimed limitations.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Horn et al. (US 6,631,356).

The rejection of claims 1-28 under 35 USC 103(a) as being obvious over Van Horn et al. (US patent no. 6,631,356) is maintained.

Re claims 29-30, Van Horn discloses a method as claimed in claims 1 and 25 of office action dated June 18, 2005. Therefore the rationale applied in the rejection of claims 1 and 25 applies herein.

### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Thao Havan whose telephone number is (571) 272-8111. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct-uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

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5/12/2005

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